

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 21 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

LEONA CRILL, aka Leona Cunningham,

Defendant - Appellant.

No. 05-30070

D.C. No. CR-01-00063-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted October 19, 2005^{**}
Seattle, Washington

Before: BRUNETTI and McKEOWN, Circuit Judges, and KING^{***}, Senior
Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

Crill argues that United States v. Booker, 125 S. Ct. 738 (2005), requires that sentencing classifications under 18 U.S.C. § 3559(a) be determined using the maximum term allowed by the Sentencing Guidelines, rather than the maximum term provided under the law describing the offense. This interpretation is incorrect. Section 3559(b) clearly states “that the maximum term of imprisonment is the term authorized by the law describing the offense.” Finally, the Ninth Circuit recently rejected an analogous argument under state sentencing laws. United States v. Murillo, 422 F.3d 1152 (9th Cir. Sept. 9, 2005).

AFFIRMED.